

Environmental Protection Agency

§ 94.804

Subpart H—Recall Regulations

§ 94.701 Applicability.

The requirements of this subpart are applicable to all engines subject to the provisions of this part.

§ 94.702 Definitions.

The definitions in Subpart A of this part apply to this subpart.

§ 94.703 Applicability of 40 CFR part 85, subpart S.

(a) Engines subject to provisions of this part are subject to recall regulations specified in 40 CFR part 85, subpart S, except for the items set forth in this section.

(b) In 40 CFR 85.1801, section 216 of the Clean Air Act applies, rather than section 214 of the Act.

(c) In 40 CFR 85.1802(a), section 213 of the Act applies, rather than section 202 of the Act.

(d) In 40 CFR 85.1803(a) and 85.1805(a)(1) the reference to “family emission limits” as defined in this part 94 promulgated under section 213 of the Act applies, rather than the reference to “family particulate emission limits as defined in 40 CFR part 86 promulgated under section 202 of the Act”.

(e) Throughout the subpart references to “engines” apply rather than references to “vehicles or engines”.

Subpart I—Importation of Nonconforming Engines

§ 94.801 Applicability.

(a) Except where otherwise indicated, this subpart is applicable to importers of engines (and vessels containing engines) for which the Administrator has promulgated regulations under this part prescribing emission standards, that are offered for importation or imported into the United States, but which engines, at the time of importation or being offered for importation, are not covered by certificates of conformity issued under section 213 and section 206(a) of the Clean Air Act (that is, which are nonconforming engines as defined in § 94.2), and this part. Compliance with regulations under this subpart does not relieve any person or entity from compliance with other ap-

plicable provisions of the Clean Air Act.

(b) Regulations prescribing further procedures for the importation of engines into the Customs territory of the United States are set forth in U.S. Customs Service regulations (19 CFR chapter I).

[64 FR 73331, Dec. 29, 1999, as amended at 68 FR 9787, Feb. 28, 2003]

§ 94.802 Definitions.

The definitions of Subpart A of this part apply to this subpart.

§ 94.803 Admission.

(a) A nonconforming engine offered for importation may be admitted into the United States pursuant to the provisions of this subpart. Subpart C of this part, including § 94.222, describes how to certify engines installed on vessels before they are imported.

(b) To obtain admission, the importer must submit to the Administrator a written request for approval containing the following:

(1) Identification of the importer of the engine and the importer's address, telephone number, and taxpayer identification number;

(2) Identification of the engine's owner, the owner's address, telephone number, and taxpayer identification number;

(3) Identification of the engine including make, model, identification number, and original production year;

(4) Information indicating the provision in this subpart under which the engine is to be imported, including a demonstration of how it qualifies for the requested exemption;

(5) Identification of the place(s) where the engine is to be stored until EPA approval of the importer's application to the Administrator for final admission;

(6) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Act or regulations thereunder; and

(7) Such other information as is deemed necessary by the Administrator.

§ 94.804 Exemptions.

(a) *General provisions.* (1) Unless otherwise specified, any person may apply

for the exemptions allowed by this section.

(2) Paragraph (b) of this section describes the provisions that apply to temporary exemptions. Paragraph (c) of this section describes provisions that apply to permanent exemptions.

(3) Applications for exemption under this section shall be mailed to the Designated Officer.

(b) Notwithstanding other requirements of this subpart, a nonconforming engine that qualifies for a temporary exemption under this paragraph (b) may be conditionally admitted into the United States if prior written approval for the conditional admission is obtained from the Administrator. Conditional admission is to be under bond. The Administrator may request that the U.S. Customs Service require a specific bond amount to ensure compliance with the requirements of the Act and this subpart. A written request for a temporary exemption from the Administrator shall contain the information required in § 94.803. Noncompliance with the provisions of this paragraph (b) will be considered unlawful importation and may result in the forfeiture of the total amount of the bond, exportation of the engine, and/or imposition of civil penalties.

(1) *Exemption for repairs or alterations.* A person may conditionally import under bond a nonconforming engine solely for purpose of repair(s) or alteration(s). The engine may not be operated in the United States other than for the sole purpose of repair or alteration or shipment to the point of repair or alteration and to the port of export. It may not be sold or leased in the United States and is to be exported upon completion of the repair(s) or alteration(s).

(2) *Testing exemption.* A person may conditionally import under bond a nonconforming engine for testing, subject to the requirements of § 94.905. A test engine may be operated in the United States provided that the operation is an integral part of the test. This exemption is limited to a period not exceeding one year from the date of importation unless a request is made by the appropriate importer, and subsequently granted by EPA, concerning

the engine in accordance with § 94.905 for a subsequent one-year period.

(3) *Display exemptions.* A person may conditionally import under bond a nonconforming engine solely for display purposes, subject to both of the following requirements:

(i) A display engine may be imported by any person for purposes related to a business or the public interest. Such purposes do not include collections normally inaccessible or unavailable to the public on a daily basis, display of an engine at a dealership, private use, or other purpose that the Administrator determines is not appropriate for display exemptions. A display engine may not be sold or leased in the United States and may not be operated in the United States except for the operation incident and necessary to the display purpose.

(ii) A display exemption is granted for 12 months or for the duration of the display purpose, whichever is shorter. Extensions of up to 12 months each are available upon approval by the Administrator. In no circumstances, however, may the total period of exemption exceed 36 months.

(c) A nonconforming engine that qualifies for a permanent exemption under this paragraph (c) may be admitted into the United States if prior written approval is obtained from the Administrator. A written request for a permanent exemption from the Administrator shall contain the information required in § 94.803. Noncompliance with the provisions of this paragraph (c) will be considered unlawful importation and may result in the exportation of the engine and/or imposition of civil penalties.

(1) *National security exemption.* Notwithstanding any other requirement of this subpart, an engine may be permanently imported into the United States under the national security exemption found in § 94.908.

(2) *Competition exemption.* Notwithstanding any other requirement of this subpart, an engine may be permanently imported into the United States under the competition exemption found in § 94.906(c).

(3) *Incomplete marine engine exemption.* An engine that is intended to be modified prior to being placed into service

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as a marine engine may be imported in a nonconforming configuration, subject to the following provisions:

(i) The modified engine must be covered by a valid marine engine certificate issued under this part prior to importation and held by a post-manufacture marinizer. (Note: Prior to certification, manufacturers and post-manufacture marinizers may import uncertified engines for testing, as specified in paragraph (b)(2) of this section.)

(ii) The engine may not be placed into non-marine service prior to being installed in a vessel.

(iii) The importer must obtain written approval from the Administrator prior to admission.

(iv) The engine and engine container must be labeled as specified by the Administrator.

(v) A manufacturer importing an engine under this exemption must modify the engine to comply with the requirements of this part.

§ 94.805 Prohibited acts; penalties.

(a) The importation of an engine (including an engine incorporated in an imported marine vessel) which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service is prohibited. Failure to comply with this section is a violation of section 213(d) and section 203 of the Act.

(b) Unless otherwise permitted by this subpart, during a period of conditional admission, the importer of an engine may not:

(1) Operate the engine in the United States; or

(2) Sell or lease or offer the engine for sale or lease.

(c) An engine conditionally admitted pursuant to § 94.804 and not otherwise permanently exempted or excluded by the end of the period of conditional admission, or within such additional time as the Administrator and the U.S. Customs Service may allow, is deemed to be unlawfully imported into the United States in violation of section 213(d) and section 203 of the Act, unless the engine has been delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws

and regulations by the end of the period of conditional admission. An engine not so delivered is subject to seizure by the U.S. Customs Service.

(d) An importer who violates section 213(d) and section 203 of the Act is subject to a civil penalty under section 205 of the Act and § 94.1106. In addition to the penalty provided in the Act and § 94.1106, where applicable, a person or entity who imports an engine under the exemption provisions of § 94.804 and, who fails to deliver the engine to the U.S. Customs Service by the end of the period of conditional admission is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations.

Subpart J—Exclusion and Exemption Provisions

§ 94.901 Purpose and applicability.

The provisions of this subpart identify excluded engines (i.e., engines not covered by the Act) and allow for the exemption of engines from certain provisions of this part. The applicability of the exclusions is described in § 94.903, and the applicability of the exemption allowances is described in §§ 94.904 through 94.909.

§ 94.902 Definitions.

The definitions of Subpart A of this part apply to this subpart.

§ 94.903 Exclusions.

(a) Upon written request with supporting documentation, EPA will make written determinations as to whether certain engines are excluded from applicability of this part. Any engines that are determined to be excluded are not subject to the regulations under this part. Requests to determine whether certain engines are excluded should be sent to the Designated Officer.

(b) EPA will maintain a list of models of engines that have been determined to be excluded from coverage under this part. This list will be available to the public and may be obtained by writing to the address in paragraph (a) of this section.

(c) In addition to the engines excluded in paragraph (a) of this section, certain engines are not subject to the